

JAN 17 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHESTER RAY WISEMAN,

Plaintiff - Appellant,

v.

ROBERT J. HERNANDEZ, Warden; et
al.,

Defendants - Appellees.

No. 11-55599

D.C. No. 3:08-cv-01272-LAB-
NLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted January 15, 2013**

Before: SILVERMAN, BEA, and NGUYEN, Circuit Judges.

California state prisoner Chester Ray Wiseman appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that defendants violated his Eighth Amendment rights in connection with the denial of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

outdoor exercise. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to exhaust and for clear error any underlying factual findings. *Sapp v. Kimbrell*, 623 F.3d 813, 821 (9th Cir. 2010). We affirm.

The district court properly dismissed Wiseman’s action without prejudice because Wiseman failed to exhaust his administrative remedies. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (requiring proper and timely exhaustion of prisoner claims). The district court did not clearly err in finding that Wiseman failed to pursue all levels of administrative grievances available to him. *Cf. Sapp*, 623 F.3d at 822-23 (exhaustion is not required where administrative remedies are rendered “effectively unavailable”).

AFFIRMED.